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UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV--JURISDICTION AND VENUE
CHAPTER 81--SUPREME COURT

§ 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
SUBTITLE A--GENERAL PROVISIONS

§ 1001a. Additional Congressional findings and declaration of policy

(a) Effects of multiemployer pension plans

The Congress finds that--

(1) multiemployer pension plans have a substantial impact on interstate commerce and are affected with a national public interest;

(2) multiemployer pension plans have accounted for a substantial portion of the increase in private pension plan coverage over the past three decades;

(3) the continued well-being and security of millions of employees, retirees, and their dependents are directly affected by multiemployer pension plans; and

(4)(A) withdrawals of contributing employers from a multiemployer pension plan frequently result in substantially increased funding obligations for employers who continue to contribute to the plan, adversely affecting the plan, its participants and beneficiaries, and labor-management relations, and

(B) in a declining industry, the incidence of employer withdrawals is higher and the adverse effects described in subparagraph (A) are exacerbated.

(b) Modification of multiemployer plan termination

insurance provisions and replacement of program

The Congress further finds that--

(1) it is desirable to modify the current multiemployer plan termination insurance provisions in order to increase the likelihood of protecting plan participants against benefit losses; and

(2) it is desirable to replace the termination insurance program for multiemployer pension plans with an insolvency-based benefit protection program that will enhance the financial soundness of such plans, place primary emphasis on plan continuation, and contain program costs within reasonable limits.

(c) Policy

It is hereby declared to be the policy of this Act--

(1) to foster and facilitate interstate commerce,

(2) to alleviate certain problems which tend to discourage the maintenance and growth of multiemployer pension plans,

(3) to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans, and

(4) to provide a financially self-sufficient program for the guarantee of employee benefits under multiemployer plans.

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS
SUBTITLE B--REGULATORY PROVISIONS
PART 5--ADMINISTRATION AND ENFORCEMENT

§ 1132. Civil enforcement

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan--

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of--

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action,

to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER III--PLAN TERMINATION INSURANCE
SUBTITLE E--SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS
PART 1--EMPLOYER WITHDRAWALS

§ 1383. Complete withdrawal

(a) Determinative factors

For purposes of this part, a complete withdrawal from a multiemployer plan occurs when an employer--

(1) permanently ceases to have an obligation to contribute under the plan, or

(2) permanently ceases all covered operations under the plan.

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER III--PLAN TERMINATION INSURANCE
SUBTITLE E--SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS
PART 1--EMPLOYER WITHDRAWALS

§ 1401. Resolution of disputes

(b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings

(1) If no arbitration proceeding has been initiated pursuant to subsection (a) of this section, the amounts demanded by the plan sponsor under section 1399(b)(1) of this title shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection.

(2) Upon completion of the arbitration proceedings in favor of one of the parties, any party thereto may bring an action, no later than 30 days after the issuance of an arbitrator's award, in an appropriate United States district court in accordance with section 1451 of this title to enforce, vacate, or modify the arbitrator's award.

(3) Any arbitration proceedings under this section shall, to the extent consistent with this subchapter, be conducted in the same manner, subject to the same limitations, carried out with the same powers (including subpena power), and enforced in United States courts as an arbitration proceeding carried out under Title 9.

UNITED STATES CODE ANNOTATED
TITLE 29. LABOR
CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM
SUBCHAPTER III--PLAN TERMINATION INSURANCE
SUBTITLE E--SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS
PART 6--ENFORCEMENT

§ 1451. Civil actions

(d) Venue and service of process

An action under this section may be brought in the district where the plan is administered or where a defendant resides or does business, and process may be served in any district where a defendant resides, does business, or may be found.

(e) Costs and expenses

In any action under this section, the court may award all or a portion of the costs and expenses incurred in connection with such action, including reasonable attorney's fees, to the prevailing party.

No. 92 C 0677

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION

SANTA FE PACIFIC CORPORATION, Plaintiff,
v.
CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND, Defendant.

October 6, 1992, Decided
October 7, 1992, Docketed

OPINION: Hon. Paul E. Plunkett

MEMORANDUM OPINION AND ORDER

Defendant Central States, Southeast and Southwest Areas Pension Fund ("Central States") has moved under Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend our Memorandum Opinion and Order of August 20, 1992 (the "Opinion"). In that Opinion, we granted Central States' motion to vacate the arbitrator's award, and we remanded this case to the arbitrator for clarification of the standard he applied under *29 U.S.C. § 1392(c)*. We also denied Plaintiff Santa Fe Pacific Corporation's ("Santa Fe") motion to confirm the arbitrator's award.

Central States raises three issues in its current motion. First, it asserts that we misunderstood its argument that Santa Fe is liable for a partial withdrawal because of a seventy percent decline in contribution levels, and it asks us to remand this issue to the arbitrator.[1] Second, it requests clarification regarding our suggestion in the Opinion that the two-pronged "objective/subjective" test formulated by Judge Moran in *In re Int'l Harvester's Disp. of Wisconsin Steel Litig., 681 F. Supp. 512 (N.D. Ill. 1988)*, is an appropriate guideline for determining a violation of *29 U.S.C. § 1392(c)*. Third, it requests that we remand this case to a new arbitrator. We have already rejected the last request,[2] so we address only the first two issues in this Opinion. For the reasons set forth below, we grant Central States' motion in part and deny it in part.

Discussion

We note as a preliminary matter that Rule 59(e) is not available to Central States given the posture of this case. Rule 59(e) applies only to "final" judgments. *National R.R. Passenger Corp. v. New Castle County, 636 F. Supp. 1482, 1486 (D. Del. 1986)*. "'Judgment' as used in [the Federal Rules of Civil Procedure] includes a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). Our decision, set forth in the Opinion, is not an appealable order, for the parties must move again in this

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[1]Central States asked alternatively that we certify the seventy percent decline issue to the Court of Appeals. We denied this request in our Order of September 11, 1992.

[2]See Order of September 11, 1992.

Court to confirm or to vacate the arbitrator's award after the arbitrator issues his new Report.

As a result, if we are to consider the motion at all, we must treat it as a common law motion for reconsideration. Rodgers v. Sullivan, 1991 WL 274446, n.1 (N.D. Ill. Dec. 13, 1991); *Above the Belt v. Mel Bohannan Roofing, 99 F.R.D. 99, 101 (E.D. Va. 1983)*. Because we believe that consideration of the issues presented in the motion will clarify our views for the benefit of the arbitrator, we will consider them.

I. Partial Withdrawal Liability

Central States had argued in its motion to vacate the arbitrator's award that the arbitrator had failed to rule on the threshold question of whether Santa Fe had experienced a seventy percent decline in contribution levels from 1983 through 1985 so as to constitute a partial withdrawal under *29 U.S.C. § 1385* (1985). We rejected this argument at that time because we found that Central States was attempting to hold Santa Fe responsible for the withdrawal liability of SFTT alone, but that at the time of Santa Fe's sale of SFTT, which occurred midway through the three-year test period required by § 1385, SFTT may have ceased to be a member of the Santa Fe control group and may have become a member of the Rail Services, Inc., control group. We held:

Central States cannot attribute SFTT's contribution levels in the latter half of 1984 and in 1985 to Santa Fe at all unless Central States can avail itself of § 1392(c), so that the sale can be disregarded, or unless Central States can show the sale of SFTT's stock was not a change in

corporate structure within the meaning of § 1398.

Opinion at 7-8.

We noted in the Opinion that Central States had failed to provide us with a single citation to the arbitration record to demonstrate that the contribution levels of any entity purportedly in the Santa Fe control group, other than SFTT, were submitted in evidence to the arbitrator. Now Central States provides to us for the first time information apparently compiled from Central States Exhibit 177, one of well over one hundred exhibits (as best we recall) that were used during the arbitration. On the basis of the information taken from this exhibit, Central States now attempts to give us facts to demonstrate the existence of the seventy percent decline in the Santa Fe control group's contribution levels.

Central States may not remedy on a motion for reconsideration omissions it made earlier in these proceedings. See *United States ex rel. Lynch v. Sandahl, 793 F. Supp. 787, 795-96 (N.D. Ill. 1992)* ("[A] motion for reconsideration may not be employed as a vehicle to introduce new evidence that could have been produced prior to the entry of judgment.") Central States has had repeated opportunities to present this argument but has consistently failed to do so in a coherent manner. Before the arbitrator, Central States relied on two theories: first, that Santa Fe's sale of SFTT violated § 1392(c) because Santa Fe sold SFTT with the intent to "evade or avoid" its liabilities under the MPPAA; and second, that the sale did not constitute a "change in corporate structure" within the meaning of *29 U.S.C. § 1398*. But it did not tell the arbitrator (in any meaningful manner that we could

discern from the arbitration record) that it was relying on the seventy percent decline issue. Having failed to present the issue to the arbitrator for decision, Central States then addressed it squarely for the first time in its motion to vacate. Still, it failed to support its argument with any evidence which demonstrated that it had calculated the seventy percent decline based on the contribution levels of any entity other than SFTT.[3] Finally, in this motion, Central States has gotten around to identifying the specific evidence which it claims supports its position.

This is a problem, however, for Central States obviously knew about Exhibit 177, and the information it contained relating to the seventy percent decline, at the time of the arbitration hearing. It also knew about Exhibit 177 when it asked this Court to vacate the arbitrator's award. We believe that its failure to identify the evidence supporting its argument about a seventy percent decline before now is inexcusable. This piecemeal presentation of the issue has forced the parties and this Court to consider the issue twice, and, if we remand this issue as Central States requests, it would force the arbitrator to re-open the hearing as well. We are extremely dismayed by the cavalier manner in which Central States has repeatedly wasted the time and energy of everyone involved in this case.

And, to make matters worse, we think Central States'

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[3]As we noted in the Opinion, Central States' argument on this issue in its brief in support of its motion to vacate contained no record citations at all. Opinion at 7.

argument is wrong. As we said when we first rejected this argument, when SFTT left the Santa Fe control group in 1984, it took its contribution history with it. See § 1398. Unless Central States can establish that SFTT remained in the Santa Fe control group following the sale, a fact that cannot be assumed, Santa Fe had no responsibility for SFTT's contribution levels or withdrawal liability after 1984.

Opinion at 8. Thus, even with the information Central States now offers from Exhibit 177, Central States cannot succeed, for we believe that SFTT's contribution history followed it at the time of the sale. As a result, if Central States wanted to impose withdrawal liability on the Santa Fe control group, which after 1984 was composed solely of Santa Fe Terminal, such liability would have to be calculated on Santa Fe Terminal's contribution history alone.[4] As Central States' chart in its brief shows, this is not the calculation Central States made. (Def.'s Br. at 3.)

Central States argues that the PBGC has expressed the opinion that where a change in corporate structure within the meaning of § 1398 occurs, an "equitable allocation" of the resulting withdrawal liability must be made. Def.'s Br. at 7; see PBGC Op. Letter 92-1, *1992 PBGC-LEXIS 1* (March 30, 1992). Central States misstates the PBGC's position, which is that typically an allocation of the contribution history of the sold entity would be made between all entities which are "successors" within the meaning of § 1398. PBGC Op. Letter 92-1, 1992

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[4]Santa Fe Terminal is merely another subsidiary of Santa Fe Pacific Corporation. See Def.'s Br. at 3.

PBGC-LEXIS at *6. Equitable allocation of contribution history is quite different than equitable allocation of withdrawal liability, for once the contribution history is allocated, there may be no withdrawal liability at all. We note also that the factual scenario which forms the basis of the PBGC's opinion is distinguishable from the factual scenario here, for the Santa Fe control group at issue here includes only SFTT and Santa Fe Terminal. Here, there is no "parent" corporation, as there is in the PBGC's hypothetical (see 1992 PBGC-LEXIS at *2), to which some portion of SFTT's contribution history should be allocated due to a history of "large transfers of covered operations or covered employees between members of the controlled group, or other unusual factors" (1992 PBGC-LEXIS at *6). There is only Santa Fe Terminal.[5] We can see no reason why Santa Fe Terminal, which has its own contribution history, should be allocated any portion of SFTT's contribution history.

Central States urges us to apply the PBGC's analysis regarding partial withdrawal liability as well. The PBGC suggests that where a seventy percent decline did not occur "solely because" of a change in corporate structure under § 1398, the sold subsidiary's contribution history must be included in determining the high base year of the parent's control group. 1992 PBGC-LEXIS at *10. This assumes that the sold subsidiary's contribution history stays with the parent for purposes of calculating a seventy percent decline under § 1385. However, the PBGC's

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[5]Central States, in its briefing earlier and on this motion, is basing its argument on a control group composed of only SFTT and Santa Fe Terminal. See Def.'s Br. at 3.

analysis disregards completely the future operations of the sold subsidiary. As Santa Fe points out, this analysis would result in the imposition of partial withdrawal liability on a seller corporation even if the sold subsidiary had prospered (and all contributions had been paid by the purchaser) after the sale. This results in a windfall to the pension plan, which is paid twice for the unfunded vested pension benefit liability of the sold subsidiary: once by the seller, who pays the partial withdrawal liability, and a second time by the purchaser, who continues all contributions. Since this double payment would not occur if the subsidiary were never sold, we see little reason why it should occur merely because of the sale, where the sale does not result in any interruption of contributions by the sold entity. We do not read § 1385 to require this result.[6] We believe the better interpretation is the one we discussed above: the contribution history of the sold entity goes with it after the sale.[7] This analysis should apply regardless of whether the sold subsidiary flourishes or fails, since § 1385 does not require that the result depend

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[6]The MPPAA generally, and § 1385 specifically, are silent on the issue of how to treat the contribution history of an entity that is sold. We believe that our conclusion is consistent with the rationale of § 1398 that "a successor or parent corporation or other entity resulting from any such change [in corporate structure] shall be considered the original employer." *29 U.S.C. §1398.*

[7]We have little doubt that Central States served the notice of withdrawal liability on Santa Fe only because the Rail Services, Inc., control group (which SFTT joined after the sale) never paid SFTT's withdrawal liability, and that Central States would not have assessed partial withdrawal liability on Santa Fe if SFTT had not gone under. Under the analysis it proposes now, however, it was entitled to impose that liability on Santa Fe regardless of SFTT's fate.

on such circumstances.

For all of these reasons, we deny Central States' motion on the seventy percent decline issue.

II. The Wisconsin Steel Test

Central States also asks us to reconsider our suggestion that the two-pronged "objective/subjective" test formulated by Judge Moran in *In re Int'l Harvester's Disp. of Wisconsin Steel Litig., 681 F. Supp. 512 (N.D. Ill. 1988)*, is an appropriate guideline for determining a violation of *29 U.S.C. § 1392(c)*. See Opinion at 10. As Central States points out, Judge Moran in fact concluded that where the statutory provision contained language nearly identical to the language of § 1392(c), the objective prong of the test was inapplicable. See *Wisconsin Steel, 681 F. Supp. at 527.*

We agree with both Central States and Judge Moran, and we modify the Opinion regarding use of two-pronged Wisconsin Steel test. The language of § 1392(c), "a principal purpose . . . to evade or avoid liability," focuses on subjective intent alone. The inclusion of the objective prong of the test as a requirement of equal weight to the subjective prong would add to § 1392(c) an additional consideration that is not supported by the language of §1392(c) itself.

We believe, however, that in the vast majority of cases objective facts regarding the viability of the purchaser will carry substantial weight as evidence of the seller's subjective intent. Thus, the objective viability of the purchaser, while not a separate prong entitled to equal consideration, will generally be a major factor in

determining whether a seller had as "a principal purpose" the evasion or avoidance of liability. We believe this approach is consistent with the language of § 1392(c).

Our modification of the Opinion regarding the Wisconsin Steel test does not change the standard we articulated in the Opinion regarding § 1392(c). There we suggested the Wisconsin Steel test only in the context of Central States' argument that the arbitrator should have considered only Santa Fe's subjective intent, not the interest of the McKee-led employee group in purchasing SFTT. Opinion at 10. Thus, our conclusion regarding the proper standard to be applied under § 1392(c) remains the same. See Opinion at 3-5.

We add a caveat here as we did in the Opinion: we offer no opinion on whether the Wisconsin Steel test and the related analysis of subjective intent must be revisited on remand. See Opinion at 10. We have clarified our earlier discussion only to provide guidance; the arbitrator is free to determine if the issue is necessary to his clarification of the standard he applied under § 1392(c).

III. Santa Fe's Request for Reconsideration

Although Santa Fe failed to bring its own motion, it asks us to affirm the "sham" standard under § 1392(c) based on this Court's prior ruling in *Banner Indus. Inc. v. Central States Pension Fund, 657 F. Supp. 875 (N.D. Ill. 1987)* and the Seventh Circuit's recent decision in Central States v. Cullum Cos., Inc., No. 91-2844, slip op. (Sept. 1, 1992). We rejected this argument when Santa Fe proposed it in its motion to confirm the arbitrator's award.

Having rejected this argument once, we will not affirm the "sham" standard now. What Santa Fe has done is merely to reiterate the arguments it made in its motion to confirm the arbitrator's award, an inappropriate use of a motion for reconsideration.[8] *United States ex rel. Lynch v. Sandahl, 793 F. Supp. 787, 796 (N.D. Ill. 1992).*[9] What Santa Fe has not done is give us a good reason to change our mind.

Santa Fe has brought to our attention the Seventh Circuit's recent decision in Central States v. Cullum Cos., Inc., 1992 WL 209694 (Sept. 1, 1992). As we read that decision, it is neither inconsistent with the standard under § 1392(c) that we articulated in the Opinion nor in any way controlling in this case. Cullum did not address the

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[8]We disagree with Santa Fe that this Court's decision in *Banner Industries, Inc. v. Central States, 657 F. Supp. 875 (N.D. Ill. 1987)*, is inconsistent with our Opinion in this case. The issue before us in Banner Industries was not the appropriate standard under § 1392(c), but whether the determination that Banner's sale of its subsidiary's stock to an ESOP caused Banner to cease to be an "employer" under the MPPAA, and whether that question had to be decided by this Court or an arbitrator. *657 F. Supp. at 879-83.* Nothing in that decision constitutes a holding that the language of § 1392(c) requires a finding that a transaction must be a "sham" or "fraud" to violate that provision, which is the position Santa Fe wishes us to take now.

[9]As the Court said in Lynch, "'This Court's opinions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure.'" *793 F.2d at 796 (quoting Quaker Alloy Casting Co. v. Gulfco Indus., Inc., 123 F.R.D. 282, 288 (N.D. Ill. 1988)).* The argument that we were wrong in rejecting the "sham" standard is more properly addressed to the Court of Appeals. See *Refrigeration Sales Co. v. Mitchell-Jackson, Inc., 605 F. Supp. 6, 7 (N.D. Ill. 1983), aff'd, 770 F.2d 98 (7th Cir. 1985).*

question of the standard under § 1392(c), for the case did not involve that provision, as the Seventh Circuit noted. 1992 WL 209694, at *6 ("The parties agree that neither [*29 U.S.C. § 1384(a)(1)* nor *29 U.S.C. § 1392(c)*] applies in this case.") The Court mentioned the words "sham transactions" only in considering the arbitrator's express concern that § 1384(a)(1)(A) did not adequately safeguard the pension plan's interests. *Id.*[10] Section 1384 explicitly exempts a "bona fide, arms-length sale of assets" from withdrawal liability. Id. We believe that the standard of "sham" or "fraud" is clearly appropriate under the "bona fide, arms-length" language of § 1384, for the focus there is an objective one. In contrast, § 1392(c) does not exempt a "bona fide, arms-length" transaction; rather, it prohibits any transaction which has as "a principal purpose" the evasion or avoidance of liability. By this language, it focuses on the subjective intent of the seller.

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[10]The Seventh Circuit's discussion of the "sham transaction" issue states, in its entirety: The third flaw in the arbitrator's analysis is his belief that taking section 1384(a)(1)(A) at face value would 'emasculate the intended purpose of preventing erosion of the plan's contribution base.' Section 1384 taken as a whole does not leave multiemployer pension plans or employees unprotected. The pension plans and employees are protected, but the safeguards appear in other subsections of section 1384 and the MPPAA. For example, the section 1384 exemption applies only to 'bona fide, arm's-length sale of assets to an unrelated party.' *29 U.S.C. § 1384(a)(1)*. Similarly, *29 U.S.C. § 1392(c)* provides that 'if a principal purpose of any transaction is to evade or avoid liability,' the withdrawal liability provisions of the MPPAA 'shall be applied (and liability shall be determined and collected) without regard to such transaction.' These two provisions ensure that businesses cannot avoid withdrawal liability through sham transactions. The parties agree that neither provision applies in this case. 1991 WL 209694, at *6.

We do not read the Seventh Circuit's limited discussion in Cullum as a determination that a transaction must constitute a "sham" or "fraud" to violate § 1392(c).

The standard we articulated in the Opinion, that evasion or avoidance of liability must be a significant or central factor behind a transaction, is less stringent than the "sham" or "fraud" standard which Santa Fe advocates. Obviously, under our standard any transaction which constituted a "sham" or "fraud" would violate § 1392(c); so would a transaction which was not a "sham" or "fraud" but had as "a principal purpose" the evasion or avoidance of liability. The example given by Judge Moran in Wisconsin Steel is illustrative: the sale of a business to a purchaser which is a Fortune 500 company would hardly constitute a "sham" or "fraud" under any common meaning of those terms, but where the seller had as a principal purpose the evasion or avoidance of its liability under the MPPAA, then the transaction would violate § 1392(c) and could be disregarded in determining withdrawal liability. See *Wisconsin Steel, 681 F. Supp. at 527.* We do not believe that this standard is inconsistent with the Seventh Circuit's comment in Cullum.[11]

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[11]Santa Fe bases its argument in part on our citation to the Sixth Circuit's decision in *Teamster's Pension Trust Fund v. Central Michigan Trucking, 857 F.2d 1107 (6th Cir. 1988).* We cited that case only in footnote 4 of the Opinion, in which we declined to adopt for § 1392(c) the meaning of "sham or fraud" used in the Tax Code, as Santa Fe urged us to do. In *Teamster's Pension Trust Fund v. Central Michigan Trucking, 857 F.2d 1107 (6th Cir. 1988),* the Sixth Circuit rejected a similar argument for analogizing to the Tax Code the language of a different section of the MPPAA. Footnote 4 of the Opinion is incorrect to the extent it states that the Sixth Circuit had considered §

Conclusion

We grant Central States' Motion to Alter or Amend Judgment with regard to the Wisconsin Steel test, and we clarify our position on that test in this Opinion. We deny the remainder of Central States' motion. We also deny Santa Fe's "request" that we require the arbitrator to use a "sham" standard under *29 U.S.C. § 1392(c)*.

1392(c) in that case; we intended to say that the Sixth Circuit is the only circuit to address the argument that the MPPAA should be analogized to the Tax Code and that it has rejected that argument.